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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MATHEW ROSS, an individual; for
 himself and those similarly situated;
 ROBERT MAGEE, an individual, for
 himself and those similarly situated and
 ROES 1 through 30,000; and the Certified
 Class,

Plaintiffs,

vs.

ECOLAB, INC., a Delaware Corporation;
 and DOES 1 through 100, inclusive,

Defendants.

CASE NO: C 13-05097 PJH

Action filed December 21, 2009

CLASS ACTION

**DECLARATION OF ALEJANDRO P.
 GUTIERREZ IN SUPPORT OF
 PLAINTIFFS' UNOPPOSED MOTION
 FOR FINAL APPROVAL OF CLASS
 COUNSEL ATTORNEY FEES AND
 COSTS**

Hearing:

Date: August 31, 2016

Time: 9:00 a.m.

Courtroom.: 3, 3rd Floor

DECLARATION

I, Alejandro P. Gutierrez, declare as follows:

1. I am an attorney at law qualified to practice before the state and federal courts in California. I am a partner with the law firm of Hathaway, Perrett, Webster, Powers, Chrisman & Gutierrez, APC, attorneys of record for Plaintiffs and Class Counsel for the certified class in the above-entitled action. I am the attorney at our firm responsible for the litigation of this class action. I have personal knowledge of the facts stated in this declaration and if called upon, I would and could testify competently thereto. I make this declaration in support of Plaintiffs' Motion for Final Approval of Attorney's Fees and Costs. The factual representations found in the contemporaneously filed Motion for Final Approval of Class Action Settlement and Declaration of Alejandro P. Gutierrez in Support of Motion for Final Approval of Class Action Settlement are, to the best of my knowledge, true and correct.

2. Seven years ago, James Icard, a route manager for Ecolab who serviced and maintained commercial dishwashers leased by Ecolab customers, came to my co-counsel, Dan Palay (who then contacted me) prepared to take on his employer Ecolab Inc., a Fortune 500 company and the world's leading provider of "health protection products" with \$13.5 billion in reported net sales (2015), because it had refused to pay James premium wages for weekend and other overtime work. He agreed to bring the wage action not only for himself but for the benefit of a class of workers who, like James, worked long hours and weekends for Ecolab without overtime pay or meal breaks. James subsequently filed a class action against Ecolab on behalf of Route Sales Managers in California. Later, Matthew Ross and Robert Magee were substituted in as class representatives.

COUNSEL'S EFFORTS ON BEHALF OF THE CLASS

3. This litigation has been complex and demanding, requiring the resources of two law firms to perform the tasks required, as set forth in the concurrently filed declarations of Daniel Palay, Michael Strauss, and Brian Hefelfinger. It is notable that Ecolab was represented in this litigation by

1 two major law firms, Littler Mendelson and Stokes Wagner Hunt Maretz & Terrell. Littler Mendelson
2 advertises itself as the largest U.S.-based law firm exclusively devoted to representing management in
3 employment matters with more than 70 U.S. and global offices. A third law firm, Wilson Elser
4 Moskowitz Edelman & Dicker, LLP, also represented Ecolab earlier in the case.

5 4. I and other Class Counsel made every effort to litigate this case efficiently by
6 apportioning tasks to reduce duplication of effort, while communicating regularly about strategy and
7 tactics. For instance, thirty-eight depositions were taken in this matter, which were split among me and
8 three attorneys at the Strauss & Palay firm. I attended twenty-two of the depositions, including eight
9 depositions involving Ecolab's designated corporate witnesses and three depositions involving Ecolab's
10 "expert," Donald Winter. We also split attendance at hearings when practical. I attended the hearings
11 on the Plaintiffs' certification motion and a number of hearings on the parties' dispositive motions, both
12 in state and federal court. As lead attorney, I was involved in settlement discussions and strategy and
13 in working with our statistical expert. In relation to the briefing tasks allocated to my firm, I spent many
14 hours researching legal issues regarding the three exemptions that Ecolab was asserting, including the
15 "hazmat" exemption. We split tasks associated with settlement and mediation matters. I prepared for
16 and attended two of the three mediations- including the final mediation which resulted in a settlement-
17 that took place in this matter. The Strauss & Palay firm prepared damages models relating to our
18 settlement efforts. I made every effort to reduce attorney's fees by assigning work to the lowest billing
19 timekeepers where feasible. For example, I worked with a certified paralegal to perform drafting of law
20 and motion briefs and other legal briefing, drafting of discovery and responses to discovery,
21 summarizing deposition transcripts, preparing issue schedules, maintaining evidence databases, and
22 preparing spreadsheets of sample SDRs and sample commissions for several class members, among
23 other tasks. I assigned another certified paralegal and an associate attorney to assist in going through
24 the mountains of Service Detail Reports, commission statements, ESM time data and other
25 documentation provided by Ecolab and to index the same.
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1 5. As described in detail below, and in the declarations of Daniel Palay, Michael Strauss,
2 and Brian Hefelfinger, both law firms have carefully reviewed its time records and exercised billing
3 judgment to delete entries that arguably represent duplicative or excessive time.

4 **PRE-FILING INVESTIGATION, COMPLAINT**

5 6. Class Counsel for the Plaintiffs in this matter were also Class Counsel for the plaintiffs
6 in the *Roe v. Ecolab* and *Dietz v. Ecolab* cases, which involved wage and hour claims brought by classes
7 of Ecolab's pest elimination specialists. In 2009, shortly after Ecolab satisfied the judgment against it in
8 the consolidated *Roe/Dietz v. Ecolab* class action cases, Icard contacted my co-counsel, Dan Palay
9 regarding the same type of violations of California wage laws alleged in the *Roe/Dietz* consolidated
10 cases. Prior to filing the complaint in this matter, we conducted a thorough investigation, including
11 interviewing several Route Managers (the title was later changed by Ecolab to Route Sales Managers)
12 who worked for Ecolab in different locations throughout California. Many of these individuals later
13 submitted written declarations in support of Plaintiffs' Motion for Class Certification. Based on this
14 investigation, we then drafted the complaint alleging class-wide violations of the Labor Code and IWC
15 Wage Orders.
16

17 **ECOLAB'S THREE REMOVALS OF STATE-FILED CASE**

18 7. Shortly after Mr. Icard's class-action complaint was filed on December 21, 2009,
19 Ecolab attempted to remove the case to federal court based on diversity and the amount in controversy.
20 In short order, Ecolab filed a motion to dismiss based on the purported effect of a pending settlement in
21 another class action involving Ecolab Route Managers, *Clark et al. v. Ecolab Inc.*, No. 07-CIV-8623
22 (S.D.N.Y.). We were tasked with addressing Ecolab's Motion to Dismiss as well as filing a Motion to
23 Remand, a Motion for Sanctions for improper removal, and an amended Complaint against Ecolab.
24 Correspondence between Class Counsel and Ecolab's attorneys was exchanged regarding the removal.
25 Remand was granted on June 18, 2010. Ecolab's tactics set the case back several months.
26

27 8. So, too, did Ecolab's Answer to Complaint, which it finally filed seven months after the
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1 original complaint was filed, in which it asserted thirty-seven boilerplate “affirmative defenses.” Such
2 necessitated Plaintiffs to prepare and file a demurrer to Ecolab’s answer, which was sustained with leave
3 to amend. By the time Ecolab filed its amended Answer to Complaint in response to Plaintiffs’ demurrer
4 on August 27, 2010, the case had been set back eight months.

5 9. Shortly after Plaintiffs filed their First Amended Complaint, Ecolab removed the case a
6 second time in June 2011, Plaintiffs opposed, and the federal court remanded it again in September
7 2011. Another three months were lost while the motion for removal was pending.

8 10. Finally, Ecolab removed the case for the third time in October 2013. This time,
9 Plaintiffs did not oppose and the case proceeded in federal court.

11 WRITTEN DISCOVERY

12 11. Plaintiffs propounded eight sets of requests for production of documents. In response to
13 those requests, Ecolab produced hundreds of thousands of documents, totaling over a million pages.
14 Ecolab’s production included Service Detail Reports, including Routine Maintenance Reports and Extra
15 Service Reports, commission statements, earnings statements, check details, performance track reports,
16 annual review forms, 360 opportunity reports, coaching plans, ESM-time records, territory rankings
17 reports, training modules, hand-outs and manuals, training transcript reports, compensation plans,
18 personnel files, Ecolab ware washing lease program materials, product promotional material, various
19 sample lease agreements, material safety data sheets, chemical labels and other relevant documents. The
20 detailed review of these documents was essential to our investigation of this case. We used many of the
21 more significant documents obtained as exhibits to Plaintiffs’ motions for class certification.

22 12. Also, we spent dozens of hours reviewing, indexing, and analyzing this documentation
23 in order to prepare Plaintiffs’ dispositive motions regarding the exemptions asserted by Ecolab. For
24 instance, among other things, my staff and I compiled six months of commission data related to selected
25 class members, including the twelve individuals whose declarations Ecolab submitted with its summary
26 judgment motion. We prepared spreadsheets of the total direct and indirect commissions and
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1 percentages of sales not related to any sales effort by the route manager. We also prepared a schedule
2 of average percentages of commissions earned through the sales by distributors. Based on our analyses,
3 we were able to prove that class members were not subject to the commissioned sales exemption.
4 Further, my staff and I went through tens of thousands of Service Detail Reports for multiple class
5 members, including those for the 12 individuals whose declarations Ecolab submitted with its motion
6 for summary judgment. From those SDRs we compiled "day in the life" spreadsheets of the tasks
7 performed by the route managers, the times spent at each customer location, and the average hours
8 worked per day. Based on our analysis of the SDRs, we were able to prove that class members were
9 performing primarily hands-on work and therefore not subject to the outside sales exemption. Our
10 review of the million plus pages of documents also informed us of the lack of any evidence to support
11 Ecolab's assertion that RSMs were commercial drivers subject to the "haz/mat" exemption.
12

13 13. In reviewing the documentation, we attempted to be as efficient as possible, given the
14 magnitude of the task. The documents were produced in various forms, including hard copy, electronic
15 and hard drive. In most cases, the documents were reviewed electronically, thus saving hundreds of
16 thousands of dollars in copying and printing costs.
17

18 14. We also propounded five sets of special interrogatories, four sets of form
19 interrogatories, and eight sets of requests for admission, and reviewed Ecolab's responses to these
20 discovery requests. The detailed interrogatories were necessary for ascertaining fundamental class
21 information, as well as invalidating the three exemptions asserted by Ecolab. We needed to be
22 completed versed in the legal elements of each exemption to tailor our interrogatories to the issues at
23 hand. For instance, we needed to understand the "Materials of Trade" exception to transporting
24 household goods containing materials on the Hazardous Materials Table in order to ask questions
25 directed at the hazmat exemption issue. We needed to understand the legal definition of commercial
26 vehicle, commercial driver, and hazardous substance for the same reason. In formatting our
27 interrogatories to get crucial information regarding the exemptions asserted, we were able to deconstruct
28

1 Ecolab's defenses and ultimately prevail at the final summary judgment phase of the litigation. We
2 spent countless hours working with the named Plaintiffs to respond to Ecolab's discovery requests. We
3 also spent substantial time preparing and finalizing Plaintiffs' Rule 26 disclosures.

4 15. Right from the beginning, Ecolab made the discovery process difficult by refusing to
5 fully respond to Plaintiffs' discovery requests. For instance, in connection with the first sets of written
6 discovery, we prepared extensive meet and confer correspondence when Ecolab refused to provide
7 pertinent information regarding the putative class. Following Ecolab's refusal to supplement its
8 responses to the first sets of special interrogatories and production of documents, we were obliged to
9 prepare a motion to compel and for sanctions against Ecolab, along with the requisite separate statement
10 and supporting declarations, which Ecolab vigorously opposed. The motion was ultimately granted and
11 Ecolab was ordered to pay sanctions to Plaintiffs. Although Ecolab paid the sanctions and answered the
12 discovery, in February 2011, it filed a motion for reconsideration of the court's order to "correct the
13 record." Such required us to spend hours preparing an opposition. Even after the court's order
14 compelling Ecolab to provide further responses, we were required to spend hours of additional time
15 meeting and conferring with Ecolab's attorneys in regard to Ecolab's failure to comply with the court's
16 order. Further, when Ecolab failed to identify documents it referred to in its discovery responses,
17 additional meet and confer telephone conferences were necessitated. In fact, we were still petitioning
18 this Court for further responses to discovery requests as late as January 2015 and asking for sanctions
19 against Ecolab, which request was granted.
20
21

22 DEPOSITIONS

23 16. We further investigated the claims in this action by deposing Ecolab's designated
24 corporate witnesses on topics ranging from the number of putative class members, Ecolab's meal period
25 policy, the position titles for route manager position and the reason for the change in title, the hours
26 worked by Plaintiffs, Ecolab's practices in regard to record-keeping of hours, what portions of the hours
27 worked by Plaintiffs were recorded on Ecolab's SDRs, Ecolab's overtime pay policy, duties and
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1 responsibilities of RSMs, the percentage of time spent by RSMs in their various duties, how sales
2 commissions were earned, including commissions earned by RSMs on machine rental fees, the contents
3 of commission statements, how RSMs were compensated, whether Ecolab limited the RSMs' hours of
4 service, and the contents of all written lease agreements, among other things. In all, we deposed seven
5 Ecolab corporate witnesses, one of them twice. For one of the corporate witness depositions, I had to
6 travel to San Francisco, for another to San Diego. The other depositions were arranged by
7 videoconference, as many of Ecolab's corporate witnesses were located in Minnesota. This required
8 extensive planning and efforts by my staff to arrange the depositions. In addition to Rule 30(b)(6)
9 witnesses and persons most knowledgeable, I attended three depositions of Ecolab's expert regarding
10 RSMs' duties, Donald Winter. In addition, we took the depositions of three of Ecolab's declarant
11 employees, one in Burbank and two in San Francisco.
12

13 17. Ecolab took 22 depositions of class members, including those of James Icard and the
14 two named Plaintiffs who substituted as class representatives, Matthew Ross and Robert Magee, and a
15 sampling of other Route Managers in a range of locations, including Los Angeles, Sacramento, San Luis
16 Obispo, San Francisco, Palm Desert, Irvine, and Corona. My co-counsel and I defended these
17 depositions, necessitating substantial travel.
18

19 18. My staff and I reviewed and summarized the thirty-eight deposition transcripts for
20 evidence of Ecolab's practices and procedures, evidence of the route managers' actual day-to-day tasks,
21 their average hours worked per day and per week, their average hours worked during mandatory
22 weekend duty, their average hours worked at home before and after work in the field, their practices in
23 keeping Service Detail Reports, and the materials they transported in their vehicles, among many other
24 things. We kept issues databases cross-referencing testimony that we referred to constantly. This work
25 was crucial in proving that route managers were working primarily rendering hands-on service, not
26 selling products, and thus not subject to the outside salesperson exemption; that most of the products
27 sold were reorders or sold by distributors and thus that the RSMs were not subject to the commissioned
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1 sales exemption; and that Ecolab never limited the hours of duty of the RSMs or required them to have
2 commercial driver's licenses or hazmat training, did not keep records of the chemicals they transported
3 in their company vehicles and thus that they were not subject to the hazmat exemption.

4 **WITNESS INTERVIEWS AND DECLARATIONS**

5 19. After Ecolab was compelled to produce the last known contact information for the over
6 200 class members, we mailed letters to all of these individuals, advising them about the pending lawsuit
7 and requesting that they contact Class Counsel if they wanted to provide information to assist in the
8 litigation. As a result of this letter, my co-counsel and I interviewed and gathered information relevant
9 to class certification, liability and damages issues in the lawsuit from dozens of putative class members
10 who contacted us. For instance, we interviewed dozens of Class Members regarding their day-to-day
11 duties at Ecolab, the amount of overtime hours they worked, the amount of weekend duty they worked,
12 the contents of their paystubs, the materials they carried on their Ecolab vehicles and the quantities of
13 such materials, whether they kept log books (none did), whether they had a commercial driver's license
14 (none did), whether they were hired as "drivers" (none were), and whether they had "haz/mat" training
15 (none did). We ultimately collected dozens of signed declarations from class members.

16 20. In addition, my co-counsel and I kept in constant contact with a number of those
17 individuals throughout the course of this action regarding additional facts they could provide relative to
18 Ecolab's claimed exemptions. A large number of Class Members in this action were particularly pro-
19 active and interested in all aspects of the litigation and we were constantly fielding inquiries from those
20 individuals as to the status of the case. We relied on our interviews with class members to provide us
21 with the facts we needed to support Plaintiffs' successful motion for class certification and successful
22 summary judgment motions relating to the three exemptions asserted by Ecolab.

23 **WRITTEN COMMUNICATIONS**

24 21. Further, once the class was certified, we mailed to all putative class members case
25 status communications.
26

EXPERT

22. In response to discovery, Ecolab produced electronic data concerning over 233 employees, including, as discussed earnings statements, SDR data, commissions statements, and ESM time records. We retained Dr. Richard Drogin, an experienced statistician, in preparation for the eventual trial of this case to be Plaintiffs' statistical sampling expert. My co-counsel and I thoroughly discussed the damages issues with Dr. Drogin and culled pertinent documents from the million plus pages of documents to submit to Dr. Drogin to review in preparation for his role as expert witness.

AMENDED COMPLAINTS

23. After Ecolab removed this matter to federal court for the first time, Plaintiffs filed a corresponding First Amended Complaint in that jurisdiction in March 2010. In June, 2011, after the case had been remanded to state court, Plaintiffs filed a Second Amended Complaint that added to the class allegations a class period beginning in December 2005. In all other regards, the complaint was largely the same. In April 2014, Plaintiffs amended their original complaint for the third time. Plaintiffs' Third Amended Complaint added a PAGA cause of action pursuant to *Labor Code* § 2699 et seq. seeking civil penalties for violations of the *Labor Code*, including sections 210, 226.3, 558, and 2699(f).

MOTIONS

24. In addition to the motion to compel further discovery described above, we also were forced to file other discovery motions, including in May 2012, a motion to quash subpoenas after Ecolab served us with six subpoenas for the depositions of putative class members unrealistically set in four different cities spanning the state of California during a period of four days. Ecolab had refused meet and confer efforts to cancel the subpoenas. Ecolab opposed the motion and filed its own motion requesting sanctions of over \$5,000 against Class Counsel for telling the deponents the depositions would not be going forward, even after Ecolab's attorneys told them the same thing. Ecolab eventually took the sanctions motion off calendar, but not before we spent hours preparing an opposition to

1 Ecolab's retaliatory motion. The parties' counsel ultimately stipulated to a compromised deposition
2 schedule and Plaintiffs' motion to quash was also taken off calendar.

3 25. We engaged in extensive substantive motion practice, in addition to the discovery
4 motions described above. As mentioned, Ecolab removed the case three times, requiring us to prepare
5 Motions for Remand for the first two removals, which were granted. Ecolab also filed two separate
6 Motions to Dismiss in federal court, which required us to prepare memorandums in opposition to such
7 motions, as well supporting declarations and appendices.

8
9 26. We filed Plaintiffs' motion for class certification in state court on February 12, 2012.
10 The motion was supported by voluminous evidence, including sixteen declarations by putative class
11 members, deposition testimony of Ecolab's corporate witnesses, earnings statements, Ecolab employee
12 manuals, Ecolab ESM Time procedures, meal break tracking forms, and ESM Time entries. After we
13 filed the motion to certify the class, Ecolab requested a continuance of the hearing on the motion pending
14 the *Brinker v. Superior Court* decision concerning an employer's duty to provide meal periods. The
15 court granted Ecolab's request and continued the hearing on Plaintiffs' motion to certify the class from
16 March 15, 2012 to April 30, 2012. The *Brinker* decision was published on April 12, 2012 and on April
17 16, 2012 Ecolab filed its opposition to Plaintiff's motion to certify the class. By the time Plaintiffs filed
18 their reply in support of their motion for class certification, the court in *Ladore v. Ecolab*, a class action
19 litigated by the same Class Counsel involving Ecolab pest elimination specialists, had issued its decision
20 on Plaintiffs' motion for class certification, in which it essentially stripped Ecolab of the "haz/mat
21 exemption" defense and Plaintiffs included Judge Feess' analysis of the same in their reply. Plaintiffs'
22 certification motion in the present case was granted at the hearing on May 25, 2012.

23
24 27. On May 24, 2012, one day prior to the hearing on Plaintiffs' motion for Class
25 certification, Ecolab filed a motion for summary judgment with supporting separate statement,
26 declarations, request for judicial notice, and lodgment of hundreds of pages of exhibits. A week later,
27 on June 1, 2012, Ecolab filed a motion for summary judgment of class claims or in the alternative motion
28

1 for summary adjudication of issues. We spent many hours drafting an opposition to Ecolab's motion
2 for summary judgment and supporting documents, including evidentiary objections. On August 10,
3 2012, without providing any explanation whatsoever for doing so, Ecolab withdrew its motion for
4 summary judgment and simultaneously filed a motion to designate action complex. We prepared an
5 opposition to the motion to designate complex with supporting documents. Ecolab's motion was denied
6 on October 2, 2012.

7
8 28. Ecolab filed its second Motion for Summary Judgment on January 24, 2013 with
9 various supporting documents related to the three overtime exemptions it asserted. Once again, we spent
10 hours and hours drafting an opposition and supporting documents in response to Ecolab's new motion.
11 Ecolab's motion was ultimately denied in September, 2013. In addition, we filed Plaintiffs' own motion
12 for summary adjudication related to the motor carrier, or "hazmat" exemption, which was filed on
13 January 24, 2013. We spent many hours conducting painstaking research related to the legislative
14 history, both state and federal, of the haz-mat exemption to overtime laws.

15
16 29. At the June 6, 2013 hearing on the cross-motions for summary judgment, the superior
17 court took issue with the fact that Plaintiffs' motion did not "completely dispose" of an affirmative
18 defense because in Ecolab's Answer to Second Amended Complaint, it impermissibly combined its
19 "haz-mat" defense with numerous exemptions from entitlement to overtime pay. Accordingly, pursuant
20 to the court's concerns, we prepared a Motion for Judgment on the Pleadings for an order compelling
21 Ecolab to amend its answer or in the alternative to strike its Fifth Affirmative Defense. Ecolab opposed
22 the motion notwithstanding the court's directive. Plaintiffs' motion for judgment was granted in August
23 2013 and Ecolab was given leave to amend its answer. One day following the court's ruling, Plaintiffs
24 re-filed their motion for summary adjudication regarding the "haz-mat" exemption defense. The court's
25 decision on Plaintiffs' motion was pending when Ecolab removed the case for the third time in
26 November 2013.

27
28 30. Meanwhile, in March 2013, Ecolab filed a motion to decertify the class, which required

1 that we spend many hours drafting an opposition with supporting documents. Ecolab filed an amended
2 summary judgment motion and amended motion to decertify the class in May 2013. Both were denied.

3 31. In April 2013, we filed an ex parte application for an order re trial management plan
4 using random sampling methodology supported by the declaration of Dr. Drogin and Ecolab opposed it
5 on the basis of purported due process rights, citing to *Wal-Mart v. Dukes*. We analyzed and
6 distinguished *Dukes* and cases interpreting it to effectively reply to Ecolab's arguments. The motion
7 became moot when Ecolab removed the case to federal court for the third and final time.
8

9 32. In July, 2013, we prepared a motion for order substituting class representatives after
10 the superior court found original named plaintiff James Icard to be an inappropriate class representative.
11 Instead of stipulating to the two substitute representatives, as its counsel had agreed to in open court,
12 Ecolab vigorously opposed the motion. Such refusal to stipulate and vigorous opposition required that
13 we spend many hours preparing the motion and supporting reply. Plaintiffs' motion was granted.
14

15 33. After the case was removed to federal court for the final time, we filed a leave to amend
16 complaint to add the PAGA cause of action, which motion was granted. In its answer to Third Amended
17 Complaint, Ecolab this time asserted twenty-seven affirmative defenses. We filed a motion to strike
18 many of Ecolab's boilerplate affirmative defenses, which Ecolab vigorously opposed. Plaintiffs' motion
19 was granted in part and Ecolab amended its answer in August 2014. In October, 2014, the Court entered
20 an order requiring Ecolab to supplement its discovery responses to prior written discovery in the case
21 (including discovery during the state court proceedings) relative to certain omitted individuals. When
22 Ecolab did not comply with the court's order, we filed a motion for contempt and sanctions, which was
23 granted, and the Court allowed Plaintiffs additional time to file their dispositive motion.
24

25 34. We spent extensive amounts of time preparing a motion for partial summary judgment
26 and supporting documents related to the three exemptions asserted by Ecolab, including 88 exhibits, this
27 time applying federal rules of civil procedure. We referred extensively in Plaintiffs' motion to the
28 *Ladore* court's January 22, 2013 order granting plaintiffs' summary judgment motion, in which it again

1 rejected Ecolab's haz-mat exemption defense. In its opposition to Plaintiffs' motion in this case, Ecolab
2 argued that Plaintiffs' counsel had misled the *Ladore* court, that Judge Feess was victimized by counsel's
3 purported misstatements, and that Judge Feess' ruling was "egregiously wrong." This Court did not
4 agree.

5 35. We also kept close watch on a New York case involving Ecolab RSMs, *Charlot v.*
6 *Ecolab*, and read depositions taken in that case, including the deposition of Ecolab's expert in this case,
7 Donald Winter. We became familiar with the filings and rulings in *Charlot* by checking the docket on
8 a constant basis and keeping in touch with plaintiffs' counsel in that case. We became aware through
9 our vigilance, for example, that the *Charlot* court had stricken the Winter declaration in support of
10 Ecolab's motion for summary judgment in the *Charlot* case. We compared facts in this case with the
11 *Charlot*, *Clark*, and *Masson* cases, all involving Ecolab RSMs.

12
13 36. We spent extensive amounts of time responding to Ecolab's Opposition to Plaintiffs'
14 motion for partial summary judgment, as well as to Ecolab's counter-motion for summary judgment and
15 motion for decertification of the class. Much time was spent on evidentiary objections related to the
16 declarations of numerous undisclosed witnesses, including the lay opinions of individuals purporting to
17 interpret state regulations regarding the motor carrier exemption (Robert Jones), hazardous materials
18 regulations (Michelle Gardner and Frits Wybenga) and purporting to offer legal conclusions regarding
19 the outside sales exemption (Donald Winter). Also, we spent much time reviewing deposition testimony
20 cited by Ecolab in its motions and comparing such testimony to the complete transcripts to give the
21 testimony context in order to offer argument rebutting Ecolab's spin on the evidence.
22

23
24 37. As stated, we conducted extensive legal research regarding the three exemptions
25 asserted by Ecolab. Based on the research we had conducted over the six plus years of litigation, we
26 were well-versed in the federal and state versions of the motor carrier exemption and the exemption's
27 legislative history. Based on such lengthy research and informed by previous courts' desire for step-by-
28 step guidance from counsel as to the motor carrier exemption regulations, my staff and I prepared a

1 comprehensive Power Point presentation of all applicable regulations, authorities and interpretive
2 bulletins, to be used if necessary to demonstrate to this Court the purpose of the exemption and why it
3 only applies to commercial drivers. When it became clear at the hearing on the parties' cross-motions
4 that the Court was itself well-versed in all aspects of the asserted motor carrier exemption, I opted not
5 to use the Power Point presentation we had laboriously prepared. In September 2015, this Court granted
6 Plaintiffs' motion for partial summary judgment as to the three exemptions asserted by Ecolab and
7 denied Ecolab's cross-motion for summary judgment regarding the same. The court also denied
8 Ecolab's motion for class decertification.
9

10 38. However, that was not the end of the Ecolab's vigorous contest relating to its
11 exemption defenses. Ecolab filed a Motion for Leave to Appeal the court's order granting Plaintiffs'
12 motion for partial summary judgment on October 28, 2015. We spent many hours responding to
13 Ecolab's ill-conceived and last-ditch motion, which motion was eventually stayed pending the parties'
14 final mediation.
15

16 39. Ecolab's aggressive defense tactics throughout this litigation left us with no choice but
17 to respond in kind; prosecuting this case required an extraordinary commitment of time, resources, and
18 energy from us and the relief achieved simply would not have been possible but for our commitment
19 and skill.
20

21 SETTLEMENT NEGOTIATIONS

22 40. The mediation process that eventually led to the Settlement Agreement was lengthy and
23 contentious. The parties discussed settlement over the course of several years, beginning with a
24 confidential settlement communication sent by Class Counsel to Ecolab's attorney in 2010. In such
25 letter, we suggested that the parties participate in private mediation and set forth models of Ecolab's
26 potential liability for each claim asserted by Plaintiffs. Ecolab was not interested in mediating at that
27 time.
28

41. In January 2014, this court ordered the parties to participate in private mediation. In

1 March 2014, and then in June 2014, Ecolab filed a motion to continue the mediation completion date.
2 Finally, a mediation was held on August 8, 2014 with mediator Michael J. Loeb. We spent much time
3 preparing a mediation brief and exhibits for the mediator, calculating and preparing damages models,
4 preparing for the mediation, and attending the mediation. The parties were unable to reach a settlement
5 at that mediation, as the gap between the parties' valuation of the case could not be bridged – Ecolab's
6 "nuisance value" was far from Plaintiffs' hard settlement number based on well-researched, fully
7 credible damages models.
8

9 42. The parties agreed to participate in a second mediation with Mr. Loeb on April 16,
10 2015. Once again, we prepared a new mediation brief and exhibits, calculated damages to date and
11 prepared new damages models, prepared for the mediation and attended the mediation. The parties were
12 again unable to reach a settlement, Ecolab insisting that it would not put serious money on the table until
13 the court had ruled on its pending motions for summary judgment and for decertification.
14

15 43. Finally, after those motions did not turn out in favor of Ecolab, the parties participated in
16 a third mediation on February 12, 2016 with mediator Hunter R. Hughes. Once again, for the final
17 mediation we prepared a new mediation brief focusing the issues as of that time, including the fact that
18 after the ruling on the parties' dispositive motions Ecolab had no defenses to liability, calculated the
19 damages as of that time and prepared new damages models. This time, the parties were able to reach a
20 class-wide settlement that has been preliminarily approved and is the subject of the final approval
21 process.
22

23 44. Under the Settlement, Ecolab has agreed to pay an all-in total of \$35 million (plus
24 employer-side taxes), the equivalent of 15 overtime hours per week to the class members for the claims
25 period plus all legal interest on these amounts owed (after fees). With 213 class members, this
26 represented a *per capita* recovery of \$164,319.24 before deduction of fees, litigation expenses,
27 administration costs and incentive awards. The average net payment (measured by dividing amongst the
28 class members the Net Settlement Amount after payment of expenses, administration costs and fees)

1 was in excess of \$100,000 to each class member. The actual result after completion of the Class Notice
2 and claims period is an average payment per Participating Class Member of over \$109,000, with the
3 highest payment estimated at \$264,383.89. See Cunningham Decl. ISO Motion for Final Approval of
4 Class Action Settlement, ¶ 15. This is one of the highest (if not the highest) *per capita* wage/hour
5 settlement recoveries ever achieved in California.

6 45. Thereafter, my co-counsel drafted the Motion for Preliminary Approval of Class Settlement
7 and all supporting documents, including Class Notice and the proposed order.

8 46. Additionally, my staff and I drafted the Motion for Final Approval of Class Settlement
9 and supporting documents, as well as the separate Motion for Final Approval of Attorney's Fees and
10 Motion for Final Approval of Incentive Awards.

12 SETTLEMENT PERCIPITATES SIGNIFICANT POLICY CHANGE

13 47. On April 11, 2016, I received from one of my clients an e-mail update from Dave
14 Scarsella, Sr. Vice President, Institutional Field Sales for Ecolab Inc. directed to "All Ecolab
15 Institutional Route Sales Managers and Pureforce Sales Service Route Managers in California." In such
16 e-mail, class members were apprised that due to the Court's ruling in this litigation that class members
17 are overtime eligible under California state law, Ecolab was changing its compensation model "so that
18 Institutional RSMs and Pureforce SSRMs in California will be eligible for overtime." Attached hereto
19 as Exhibit A and incorporated herein by reference is a true and correct copy of the e-mail communication
20 I received from my client.

23 CLASS COUNSEL OVERCAME A SERIES OF SIGNIFICANT RISKS

24 48. This was not an easy case. To achieve the Settlement for the class, we took on and
25 overcame a series of very significant risks. As an initial matter, the defendant here mounted a
26 particularly aggressive defense over the course of over six years; each step of this case has been marked
27 by heavily contentious litigation. As mentioned, Ecolab was represented by experienced and well-
28 resourced defense firms, who vehemently contested liability. (See ¶ 3 herein).

1 49. Further, there were several pending cases that could have significantly impacted this
2 case. For instance, there was a pending case in the Central District, *Ladore v. Ecolab*, No. CV-11-9386
3 FMO (JCx), a class action litigated by the same Class Counsel involving Ecolab pest elimination
4 specialists, which could have significantly impacted this case. There was real risk that a decision against
5 Plaintiffs on the parties' cross-motions for summary judgment in *Ladore* could have doomed Plaintiffs'
6 overtime claims in this case. Instead, as mentioned, Judge Feess repudiated Ecolab's claim that its pest
7 control workers were subject to the "haz/mat" exemption, one of the same exemptions asserted by
8 Ecolab here.
9

10 50. Also pending during the litigation of this case was *Wal-Mart Stores, Inc. v. Dukes*, 131
11 S.Ct. 2541 (2011), which decision Ecolab relied on extensively to support its argument for
12 decertification of the class, asserting that *Wal-Mart* "changed the legal landscape with respect to class
13 certification in misclassification cases." (Dock. 79-1, pg. 26). Throughout the litigation, the parties
14 disagreed substantially on whether class certification was proper given the disparity between the
15 damages of individual class members and in light of *Dukes*. The California Supreme Court's decision
16 in *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1 (2014) also caused uncertainty as to whether Plaintiffs
17 could maintain class certification. Ecolab relied on *Duran* to argue for decertification. (Dock. 79-1, pg.
18 29).
19

20 51. The litigation also involved a meal break claim. The California Supreme Court was
21 reviewing the standards applicable to recovery of rest and meal period premiums during the pendency
22 of this case. *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012). Indeed, Plaintiffs'
23 motion to certify the class was continued at Ecolab's request to await the *Brinker* decision being
24 published. There was a significant risk that the *Brinker* decision could have spelled the end to Plaintiffs'
25 meal break claims.
26

27 52. Here, challenging as it was to maintain the meal break claim after *Brinker* was published,
28

1 through our diligent efforts in sifting through thousands of pages of documents for evidence regarding
2 meal breaks and pouring through testimony to rebut Ecolab's argument, Plaintiffs were able to prevail
3 at least in part on their meal break claim, for the period of December 2005 to October 2008.

4 53. The parties fiercely disputed whether Ecolab properly classified the Class Members as
5 exempt from California overtime pay pursuant to one or more of three claimed exemptions— namely,
6 the outside sales exemption, commission exemption and the motor carrier/"haz-mat" exemption. Had
7 the exemptions been found applicable to this case, there was a real risk that the class would not have
8 recovered anything. Instead, through Class Counsel's efforts and expertise, Plaintiffs were able to
9 prevail on their class certification motion, survive two motions for decertification, survive three motions
10 for summary judgment on Ecolab's asserted exemptions, and prevail on their own summary adjudication
11 motions related to the three asserted exemptions.
12

13 THE CASE PRESENTED NOVEL AND COMPLEX ISSUES

14 54. This action involved specialized and highly contested legal issues that are at the cutting
15 edge of recent developments in the law, i.e., whether the claims for overtime compensation were barred
16 based on the three asserted exemptions. Subsumed within the commissioned sales exemption issue was
17 a sub-issue of which IWC Wage Order applied to class members, since the commissioned sales
18 exemption appears in only two of the Wage Orders. This Court noted the "ambiguity in the application
19 of the outside salesperson exemption." (Dock. No. 104, pg. 7). The Court also noted that the parties'
20 dispute as to the commissioned sales exemption could be traced to "an ambiguity in the law . . ." (Dock.
21 104, pg. 12). Resolution of the issues involved researching and analyzing conflicting court opinions
22 and comparing and contrasting the facts of this case to those of recent cases.
23
24

25 55. Ecolab required expert assistance in its decertification and summary judgment briefing
26 with respect to the outside salesperson exemption, which "expert" (Donald Winter) Class Counsel
27 examined in three separate depositions. We examined several of Ecolab's corporate witnesses in regard
28 to the outside sales exemption and commissioned sales exemption, such as the duties and responsibilities

1 of RSMs, the percentage of time spent by RSMs in their various duties, how sales commissions were
2 earned, including commissions earned by RSMs on machine rental fees, the contents of commission
3 statements, and the contents of all written lease agreements, among other things. In all, Class Counsel
4 deposited seven Ecolab corporate witnesses, one of them twice.

5 56. The litigation also involved particularly specialized skills from me and my co-counsel in
6 analyzing the “haz-mat” exemption asserted by Ecolab. The scant published cases that dealt with the
7 California motor carrier exemption focused on issues distinct from those raised in this case; indeed, the
8 issues presented here are completely novel. Because of the vacuum of authority relating to the
9 application of this exemption to workers who were hired for positions other than driver (here, dishware
10 service technicians), we undertook in-depth research into the legislative history of both the California
11 motor carrier exemption and the federal Motor Carrier Act exemption and all associated regulations and
12 statutes, expending a significant amount of time and incurring appreciable fees. We also spent a
13 significant amount of time reviewing material safety data sheets related to the products, such as
14 detergents and rinses, that were sometimes transported on class members’ service vehicles and
15 comparing them to the Hazardous Materials Table and to the Materials of Trade exception to the
16 transportation of hazardous materials found in both federal and state regulations.

17 57. Reflecting the complexity of this issue is the fact that Ecolab required the assistance of
18 three experts for its decertification and summary judgment briefing with respect to the motor carrier
19 exemption, who purported to explain to the Court hours of service regulations (Robert Jones); U.S.
20 Department of Transportation Hazardous Materials Regulations (Frits Wybenga and Michelle Gardner);
21 the Materials of Trade exception to transporting hazardous materials (Michelle Gardner); and Material
22 Safety Data Sheets information (Michelle Gardner). Class Counsel examined Ecolab corporate
23 witnesses Ms. Gardner and Greg Suggar in depth regarding the materials transported by class members
24 and examined Ecolab corporate witness Troy Sharratt with regard to Ecolab’s policies regarding hours
25 of service regulation training.

CLASS COUNSEL'S SIGNIFICANT OUT-OF-POCKET EXPENSES

58. Both my firm and my co-counsel's firm incurred significant expenses in litigating this case. These substantial costs were not reimbursed by Plaintiffs.

59. My firm incurred \$49,859.55 in costs. The Strauss & Palay firm incurred \$23,518.31 in total costs, for a combined total of \$73,377.86. See Hefelfinger Decl., Ex. 3. Deposition costs were significant, as Ecolab decided to take over 23 depositions, all of which my co-counsel and I had to defend, many of which required extensive travel throughout the state of California. We additionally took nine corporate witness depositions, many of them requiring videoconferencing costs, as most of the corporate deponents were located in Minnesota. We also took three depositions of Ecolab's expert Donald Winter and depositions of three Ecolab declarants in Burbank and San Francisco. The total amount of deposition costs paid by the Hathaway firm is \$31,613.97. Mediation expenses were also significant, as the parties participated in three separate mediation sessions. Expert fees in this matter totaled \$3,750.00 for the retained services of Drogin, Kakig & Associates, of which the Hathaway firm paid \$1,875.00. Other costs included court reporter fees, Court Call fees, Pacer fees, filing fees, attorney service costs, postage costs, FedEx costs, and travel costs, summarized in the table below.

Expense Type – Hathaway firm	Cost
Deposition costs	\$31,613.97
Pacer costs	1,326.42
Court Call costs	299.00
Court Reporter costs	2,545.25
Filing fees	80.00
Attorney Service costs	1,472.00
Postage expense	485.36
Expert fees	1,875.00
Federal Express costs	461.22
Mediator	3,375.00
Travel costs	6,326.33
Total	\$49,859.55

60. Neither of the two firms have received any reimbursement for any of the monies

1 expended to cover costs incurred, and advanced all of these costs on a wholly contingency basis.
 2 Attached as Exhibit B are schedules of the costs expended by the Hathaway firm.

3 **BACKGROUND AND EXPERIENCE OF HATHAWAY**
 4 **LAW FIRM ATTORNEYS**

5 61. I am a shareholder of the law firm of Hathaway, Perrett, Webster, Powers, Chrisman &
 6 Gutierrez, APC. I am a graduate of University of California at Davis Law School and was admitted to
 7 the California Bar in 1983.

8 62. I have extensive experience in civil litigation and an over 30-year history of aggressive,
 9 successful prosecution of labor law cases. For instance, in a wage and hour class action, in binding
 10 arbitration, I succeeded in procuring an award of \$51.2 million for the class. This recovery represented
 11 close to 100% of the compensatory damages suffered by class members, an exceptional and rare result.
 12 In fact, my efforts resulted in the largest per-person award in California history. Further, I have
 13 successfully resolved several class actions before trial in favor of the class, including *Avitia v. Big Lots*
 14 *Stores*, Los Angeles County Superior Court Case No. BC436317; *McNeal v. Pacific Satellite*, Los
 15 Angeles County Superior Court Case No. BC382775; *Beltran v. Restaurant Miramar*, Ventura Co.
 16 Superior Court Case No. 56-2009-00362572-CU-BC-VTA; *Dockstader v. Employee Leasing, Inc.*
 17 Ventura Co. Superior Court Case No. 56-2010-00371075-CU-OE-VTA; *Roe v. Ecolab*, Ventura Co.
 18 Superior Court Case No. CIV 233936; *Dietz v. Ecolab*, Ventura Co. Superior Court Case No. CIV
 19 241827; *Ladore v. Ecolab*, USDC Case No. 11-9386; *Britto v. Zep*, Alameda County Superior Court
 20 Case No. VG-10553718; *Aguiar v. Zep*, USDC Case No. 13-0563; *Rizk v. DirectSat*, Los Angeles
 21 County Superior Court Case No. BC363435; *Martino v. Ecolab*, USDC Case No. 14-4358, and
 22 *Savannah v. Sodexo*, USDC Case No. 15-5845.

23 63. I have worked closely on this case for over six years, beginning in December, 2009.
 24 Since that time, I have participated in all phases of the litigation, including researching the claims,
 25 analyzing the law, briefing and arguing motions on the pleadings, organizing discovery, taking and
 26
 27
 28

1 defending multiple depositions, including deposing Ecolab's expert and Ecolab's persons most qualified
2 on a range of topics; developing expert testimony, briefing and arguing Plaintiffs' motions for summary
3 judgment, briefing the opposition to Ecolab's appeal of the Court's order granting summary judgment
4 in favor of Plaintiffs, participating in settlement discussions, including preparing the mediation brief for
5 and participating in the last and successful mediation. The Settlement Agreement was the result of hard
6 fought and lengthy negotiations between Plaintiffs and Ecolab.

7
8 64. I have a keen understanding of the factual and legal issues involved in this case, as well
9 as the relative strengths and weaknesses of Plaintiffs' claims. After careful and extensive review and
10 analysis of the legal and factual issues and the evidence gathered in this case, I believe that the Settlement
11 Agreement is fair, adequate, and reasonable and in the best interests of the Class members.

12 65. Adam Acevedo is an associate attorney at the Hathaway firm who worked under my
13 supervision on this case. I assigned to Mr. Acevedo document review and indexing of the multitude of
14 documents produced by Ecolab in this matter. Mr. Acevedo spent many hours looking through the
15 records produced by Ecolab and indexing the same in order for us to map out the actual work performed
16 by Ecolab's Route Managers. Mr. Acevedo also assisted in drafting deposition notices for Ecolab's
17 persons most knowledgeable. Mr. Acevedo received a Master of Business Administration degree from
18 California Lutheran University in 2005. He graduated from Drake University Law School in December
19 2007 and was admitted to the California Bar in June 2008. Mr. Acevedo has been a civil litigator since
20 2008 and devotes his time to employment litigation. My firm currently charges an hourly rate of \$400
21 for Mr. Acevedo.
22

23
24 66. Coleen De Leon is a certified paralegal who worked under my supervision in this case.
25 Ms. De Leon's duties involved taking a large share of all legal research and writing. She was involved
26 in every aspect of the case from its inception, from preparing discovery questions, responding to
27 discovery, drafting motions and other briefs, responding to motions filed by Ecolab, drafting mediation
28 briefs and preparing mediation binders, drafting appellate responsive briefs, summarizing depositions,

1 preparing summaries of billing records and categorizing tasks for the instant motion, among other
2 substantive tasks. Ms. De Leon received her degree in French at the Collège International de Cannes in
3 France. She went on to earn her paralegal certification in 2002 after attending the Legal Assistantship
4 Program at the University of California at Santa Barbara. She has over 25 years of experience in civil
5 litigation and specializes in wage and hour class actions. My firm charges \$195 an hour for Ms. De
6 Leon's time.

7
8 67. Debra Acevedo is also a certified paralegal who worked under my supervision in this
9 case. Ms. Acevedo assisted in this case by reviewing thousands of pages of sales records and
10 commission statement details for selected Ecolab Route Sales Managers in order to calculate the actual
11 direct sales and indirect sales made on accounts. Ms. Acevedo has been in the legal field since 1982
12 and received her certification after attending the Legal Assistantship Program at the University of
13 California at Santa Barbara. My firm charges \$195 an hour for Ms. Acevedo's time.

14
15 68. Associate attorneys Geoffrey Farwell, Seth Shapiro, and Alexis Ridenour also
16 performed work on this case. Mr. Farewell spent 11.6 hours on legal research on the case, Mr. Shapiro
17 spent 13.8 hours on discovery matters, and Ms. Ridenour spent 1.2 hours working on a motion to strike.
18 I have written off all of their time.

19 HATHAWAY LAW FIRM ATTORNEYS' FEES

20 69. This matter has required the Hathaway firm to spend time on this litigation that could
21 have been spent on other matters. At various times during the litigation of this class action, this lawsuit
22 has consumed my time, along with the time of various associate attorneys and certified paralegals over
23 the years. Such time could otherwise have been spent on other fee-generating work.

24
25 70. The specific work performed by my firm is categorized in Exhibit C. Among other
26 things, my firm coordinated work between the two firms, served as the point of contact and
27 communication with Ecolab's counsel; drafted and responded to written discovery, coordinated
28 document review and reviewed documents, spoke with class members and drafted declarations, took

depositions of Ecolab's corporate designees with respect to various different categories of issues, took depositions of Ecolab declarants, defended class member depositions, including the named Plaintiffs' depositions, coordinated the work of Plaintiffs' expert statistician, researched and drafted legal arguments for class certification, dispositive motions and other briefs; revised and edited all briefs submitted in this matter; prepared for and argued the class certification motion and dispositive motions; negotiated settlement terms with Ecolab and preparing settlement documents; drafting supporting documents and arguing the motion for preliminary approval; and drafting the application for attorneys' fees and costs and supporting documents. We worked as much as was necessary to fully protect the interests of a class facing a determined opposition with great resources. Much of the work performed was required because of tactics by Ecolab that made the litigation more complex and time-consuming, as discussed *infra*.

71. The regular practice at the Hathaway firm is for all attorneys and certified paralegals to keep contemporaneous time records, maintained on a daily basis, and describing tasks performed in 0.1 hour increments. Our firm makes use of timekeeping software called Legal Master.

72. The current rates for the Hathaway firm's timekeepers is set forth in the table below.

Timekeeper	Years of Experience	Hourly Rate
Alejandro P. Gutierrez, Partner	33 years	\$800.00
Adam Acevedo, Associate Attorney	8 years	\$400.00
Coleen De Leon, Certified Paralegal (CP)	25+ years	\$195.00
Debra Acevedo, CP	25+ years	\$195.00

These rates are my firm's current commercial billing rates and are supported by our extensive and specialized experience in class wage and hour cases and recognized expertise. These are the rates that are paid by our commercial, non-contingency fee clients.

73. I have participated in cases in which I was awarded attorneys' fees at an hourly rate of

1 \$700. For example, in *Aguiar et al. v. Zep et al.*, USDC Case No. 13-cv-99563-WHO, another wage
 2 and hour case, the court found in its August 2014 order granting plaintiffs' attorneys' fees that my then-
 3 current rate of \$700.00 was a reasonable rate. (WL 4063144 (N.D.Cal. Aug. 15, 2014)).

4 74. I have personal knowledge of the hourly rates charged by other attorneys with
 5 comparable experience to mine in the San Francisco market. Based on that information, I believe that
 6 the Hathaway firm's hourly rates are fully consistent with market rates in the Northern District for
 7 attorneys with comparable experience, expertise, and qualifications. See, e.g.:

- 9 • *Vasquez v. USM Inc.*, No. 13-5449-JD, WL612906, *3 (N.D.Cal., Feb 16, 2016), a wage and
 10 hour class action, where the court in granting final approval of a class action settlement and
 11 attorney's fees found that the fee requested, although representing more than 50% of the total
 12 cash settlement, was adequately supported by counsel's lodestar, which was calculated using
 13 hourly fees of \$725 for the lead attorney and up to \$840 for a senior partner (13:5449, Docket
 14 139-1);
- 15 • *Moore v. PetSmart, Inc.*, No. 12-3577 EJD, WL5439000, *12 (N.D.Cal. Aug. 4, 2015), a wage
 16 and hour class action in which the court in granting in part final approval of the motion for
 17 attorneys' fees stated that, "In this case, the relevant community is the Northern District of
 18 California where reasonable rates for partners range from \$450 to \$800, associates range from
 19 \$285 to \$510, and paralegals and litigation support staff range from \$150 to \$240" (*Id.*);
- 20 • *Holloway et al. v. Best Buy Co., Inc.*, No. 05-5056 PJH (N.D.Cal. Nov. 9, 2011), a class action
 21 alleging employment discrimination, in which this court approved a lodestar award based upon
 22 rates of up to \$825 per hour;
- 23 • *Californians for Disability Rights v. California Dept. of Transp.*, WL 8746910 (N.D. Dec 13,
 24 2010), a class action alleging violations of the ADA, in which the court found hourly rates of up
 25 to \$835 were reasonable for a 49-year attorney, \$730 for a 25-year attorney, and \$265 for senior
 26 paralegals.
 27
 28

- 1 • *Savaglio, et al. v. WalMart*, Alameda County Superior Court No. C-835687, Order Granting
2 Class Counsel's Motion for Attorneys' Fees, filed September 10, 2010, involving a wage and
3 hour class action in which the court found reasonable, before applying a 2.36 multiplier, rates of
4 up to \$875 per hour for a 51-year attorney, \$750 for a 39-year attorney, and \$775 for a 33-year
5 attorney;
- 6 • *Taylor et al. v. West Marine Products, Inc.*, 13-4916 WHA, WL 2452902, *2 (N.D.Cal. 2015),
7 a wage-and-hour class action in which the court in granting a motion for attorney's fees, found
8 the rate of \$790 to be reasonable for a 41-year attorney and \$625 to be reasonable for 12-year
9 attorneys;
- 10 • *Loretz v. Regal Stone, Ltd.*, 756 F.Supp.2d 1203, 1211 (N.D. Cal. 2010), a class action brought
11 in part under California's UCL, in which the court found that the hourly rates of \$775 to \$900
12 for partners and \$225 for a legal assistant were reasonable;
- 13 • *Sarinana v. DS Waters of America, Inc.*, No. 13-0905 EMC (N.D. Cal. 2015), a wage-and-hour
14 class action where the court approved 33 percent of the fund attorney fees with lodestar hourly
15 rates of \$750 for a 23-year attorney (ECF No. 134; 2015 WL3820274 (N.D.Cal. 2015);
- 16 • *Alexx, Inc. v. Charm Zone, Inc.*, 2011 WL 249471, *2 (N.D. Cal. 2011) (approving as reasonable
17 Jones Day "hourly rate charged (ranging from \$400 to \$800)" the reasonableness of which was
18 not even contested).

19 Further, in the *Ladore v. Ecolab* wage-and-hour class action in which I was co-Class Counsel,
20 the U.S. District Court, Central District granted the plaintiffs' motion for attorney's fees, where I had
21 billed at my then-current rate of \$700 per hour for my time. The *Ladore* court found that the result that
22 I and my co-counsel achieved was an exceptional result. (Order Re: Final Approval of Class Action
23 Settlement; 11-9386, Doc. 112.)

24 75. The contemporaneously maintained logs of time expended by the Hathaway firm
25
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27
28

1 indicate a total of 4,143.65 hours expended litigating this matter. Attached hereto as Exhibit C is a true
2 and correct summary by individual of the hours, billing rate, and lodestar for that particular person's
3 work on this matter through August 5, 2016. The Hathaway firm's total lodestar on the 4,143.65 hours
4 expended through August 5, 2016 amounts to \$2,121,082.25. The time the Hathaway firm spent on this
5 case has been completely contingent on the outcome of this action. Our firm has not been paid for any
6 of the time spent on the action.

7
8 76. I and my staff at Hathaway spent considerably more time on this case than is reflected
9 in the time compilation set forth as Exhibit C, but I reduced our actual time in the exercise of billing
10 judgment. For example, I wrote off time for any newly assigned attorneys' review of background
11 materials and getting up to speed on the case as well as for any timekeepers who billed fewer than 20
12 hours of time on the case. I also delegated many tasks to lower-billing paralegals and associate
13 attorneys.

14
15 77. I expect that the Hathaway firm will spend more time on this case in the future. The
16 current fee application only includes time through August 5, 2016, and does not include all time spent
17 preparing for and filing this application and preparing for and attending the final approval hearing.
18 These activities will likely include communicating with class members who contact us regarding the
19 court's approval of the settlement. Even after this settlement is finally approved, we are likely to
20 continue work on this case without compensation by communicating with class members about Ecolab's
21 compliance with the terms of the Settlement.

22
23 78. I instructed my paralegal to obtain the most current Laffey Matrix online. Attached
24 hereto as Exhibit D and incorporated herein by reference is a true and correct copy of the Laffey Matrix
25 for 2016.

26
27 79. Attached hereto Exhibit E and incorporated herein by reference is a true and correct
28 copy of the locality pay rate for the San Jose-San Francisco-Oakland area effective January 2015, which
my staff obtained online.

1 I declare under penalty of perjury and under the laws of the United States of America that the
2 foregoing is true and correct. Executed this 15th day of August, 2016, at Ventura, California

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4 

5 Alejandro P. Gutierrez
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Exhibit A

From: Millechek, Colleen [<mailto:Colleen.Millechek@ecolab.com>] **On Behalf Of** Scarsella, Dave
Sent: Monday, April 11, 2016 4:31 PM
Subject: California Institutional RSM & PureForce SSRM Update
Importance: High

April 11, 2016

**TO ALL ECOLAB INSTITUTIONAL ROUTE SALES MANAGERS AND
PUREFORCE SALES SERVICE ROUTE MANAGERS IN CALIFORNIA**

Ecolab reached a tentative settlement in a California court case regarding how a limited class of Institutional Route Sales Managers (RSMs) and Pureforce Sales and Service Route Managers (SSRMs) have been paid in California. Historically, we have compensated California-based associates on a salary-plus-commission-plus bonus basis, which is consistent with the compensation model for our associates in other states. This compensation plan was designed to reward our RSMs and SSRMs for their efficiency and sales accomplishments, and to enable greater flexibility and independence. We believed this was appropriate in California, and consistent with California state law.

However, a California federal court judge recently ruled, that RSMs and SSRMs in California who are in the class are overtime eligible, under California state law. We reviewed the judge's decision carefully and continue to believe that we correctly followed the law in how we paid our associates in California. However, we decided not to appeal the judge's ruling, so that we could continue focusing on serving our customers and associates, and invest in our business, rather than spend time and money to continue litigation.

Under the terms of the agreement, which still needs to be approved by a court, we have denied any wrongdoing or legal violation with regard to paying our California RSMs and SSRMs on a salary-plus-commission basis. We have decided, however, to change our compensation model so that Institutional RSMs and Pureforce SSRMs in California will be eligible for overtime. This means that RSMs and SSRMs will need to be converted from salaried-plus-commission-plus-bonus to hourly employees. These changes to the compensation model in California will require changes to how the work day is managed for our

California-based RSMs and SSRMs, and include a requirement that they track the beginning and ending of each work period and all of their hours worked on a daily basis. We are working diligently to develop the new compensation plan (different from our current salary-plus-commission-plus-bonus plan) and we will provide you with further details as they become available. In the coming months, we will circulate new policies and work rules to our associates in California. We also will schedule training sessions for all RSMs and SSRMs and managers to ensure that our new policies and work rules are understood and followed.

This court decision is based on California state law, and the revised compensation model will only apply to California RSMs and SSRMs. The compensation model will not change for our associates outside of California, who will continue to be compensated on a salary-plus-commission-plus-bonus basis which rewards performance. A federal court judge in another state recently approved our current compensation model for RSMs and SSRMs.

Our associates are critical to the success of our business and the success of our customers. As we work to implement these new work rules and policies, we ask that you continue to focus on delivering the exceptional service our customers expect from Ecolab.

Please direct questions to your District Manager or Area Manager, they will consult with Legal and Human Resources as necessary. Thank you for your continued commitment to our customers and our team.

Sincerely,

Dave Scarsella
Sr. Vice President, Institutional Field Sales

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Exhibit B

ROSS v. ECOLAB
SUMMARY OF COSTS

Hathaway Firm

Category of Cost	Amount
Deposition costs	\$31,613.97
Pacer costs	1,326.42
Court Call costs	299.00
Court Reporter costs	2,545.25
Filing fees	80.00
Attorney Service costs	1,472.00
Postage expense	485.36
Expert fees	1,875.00
Federal Express costs	461.22
Mediator – Hunter ADR	3,375.00
Travel costs	6,326.33
Total	\$49,859.55

TRAVEL COSTS

Hathaway Firm

Date	Air fare	Amount
5/25/15	Hearing on motion for class certification San Francisco	306.80
4/23/13	Hearing on cross-motions for summary judgment San Francisco	406.80
6/6/13	Hearing on motion for summary judgment San Francisco	198.90
8/20/13	Hearing on motion to decertify, judgment on the pleadings, motion to substitute representative San Francisco	445.80
9/26/13	Hearing on dispositive motions San Francisco	413.80
8/8/14	Attend mediation JAMS San Francisco	267.20
9/4/14	Case management conference federal court Oakland	429.20
5/20/15	Hearing on summary judgment motions federal court Oakland	458.10
5/11/16	Hearing on preliminary approval of class settlement Oakland	135.96
		\$3,062.56
	Hotels	
4/22/13	Hearing on cross-motions for summary judgment San Francisco	228.66
8/19/13	Hearing on motion to decertify, judgment on the pleadings, motion to substitute representative	379.35
9/25/13	Hearing on dispositive motions San Francisco	597.41
11/17/14	Depositions of Gerard Kentie and Andrew Beattie	276.39
5/19/15	Hearing on summary judgment motions Oakland	521.96
		\$2,003.77
	Taxi fares	
	Round-trip fare \$100 - \$105, nine fares	\$900.00
	Parking	\$360.00
	Total Travel Costs	\$6,326.33

DEPOSITION COSTS

Hathaway firm

Inv. Date	Cost	Amount
11/15/10	Merrill Corporation Videoconference Braun and Kerr depos	900.00
11/17/10	Benchmark Reporting Agency, Inc. Deposition of Elizabeth Braun - video Deposition of Jennifer Kerr - video	985.00
12/21/10	Benchmark Reporting Deposition of Elizabeth Braun – transcript Deposition of Jennifer Kerr - transcript	1,613.45
1/13/11	Merrill Corporation Deposition of Gregory John Suggar	1,568.85
1/19/11	Merrill Corporation Deposition of Greg Suggar - video	1,180.00
5/16/11	Merrill Corporation Deposition of David Bernhard (30(b)(6))	731.75
4/17/12	Peterson Reporting Deposition transcripts Eric Cole, McSweeney	219.00
5/8/12	Peterson Reporting Deposition of Chris McSweeney	348.88
5/8/12	Peterson Reporting Deposition of Eric Cole	308.54
7/19/12	Merrill Corporation Deposition of Enrique Callejas	450.00
8/1/12	Merrill Corporation Deposition of Donald James Winter	2,278.10
7/31/12	Merrill Corporation Deposition of Donald Winter, video conferencing	1,102.50
3/28/13	Merrill Corporation Deposition of Jennifer Kerr, PMK	1,397.75
3/29/13	Merrill Corporation Deposition of Jennifer Kerr, PMK – videoconference	1,225.00
4/2/13	Merrill Corporation Deposition of Donald Winter – videoconference	1,876.00
4/10/13	Merrill Corporation Deposition of Donald Winter – videoconference	1,496.25
4/10/13	Merrill Corporation Deposition of Donald Winter, Vol. 3	2,387.15
4/10/13	Merrill Corporation Deposition of Donald Winter, Vol. 2	2,561.00
6/3/13	Merrill Corporation Deposition of Ecolab PMK cancellation fee	530.00
6/7/13	Merrill Corporation Appearance fee (Ecolab canceled deposition)	182.75

DEPOSITION COSTS

Hathaway firm

6/7/13	Merrill Corporation Appearance fee (Ecolab canceled deposition)	182.75
11/30/14	Veritext Legal Solutions Depositions of Beattie and Kentie	1,709.25
12/08/14	Veritext Legal Solutions Deposition of Felipe C. Gutierrez, Jr.	1,282.95
12/31/14	Veritext Legal Solutions Deposition of Kentie, Vol. 2 and Ralph Atkins	1,620.05
12/31/14	Merrill Corporation Cancellation fee – video (Ecolab canceled)	250.00
12/31/14	Merrill Corporation Deposition of Ecolab 30(b)(6) witness cancellation	700.00
1/29/15	Merrill Corporation Deposition of Troy Sharratt (30(b)(6) witness) Deposition of Doug Moechnig (30(b)(6) witness)	1,777.00
1/28/15	Merrill Corporation Deposition Troy Sharratt – video conference	750.00
Total		\$31,613.97

ATTORNEY SERVICE COSTS

Hathaway Firm

Inv Date	Cost	Amount
11/07/12	Janney & Janney Attorney Service Rush Fax filing fee Case Management Statement	95.00
2/14/13	Attorney's Diversified Services Obtain Order dated June 11, 2012 and e-mail to client	25.00
4/11/13	Janney & Janney Attorney Service Rush filing Opposition to Defendant's MSJ and supporting documents	65.00
4/23/13	Janney & Janney Attorney Service Rush filing Plaintiff's Opposition to Motion for Summary Judgment of Class Claims	185.00
4/24/13	Janney & Janney Attorney Service Next day filing Plaintiff's Notice of Errata	65.00
5/3/13	Janney & Janney Attorney Service Rush filing Plaintiff's Ex Parte Application	161.00
5/9/13	Janney & Janney Attorney Service File Plaintiff's Notice of Errata in Plaintiffs' Opposition to Ecolab MSJ	65.00
6/4/13	Janney & Janney Attorney Service Rush filing Plaintiffs' Reply in Support of Trial Management Plan; evidentiary objections to Declaration Of Frishberg	156.00
8/20/13	Janney & Janney Attorney Service Rush filing Reply in support of Order Substituting Class Reps; Declaration of APG in support	122.00
8/20/13	Janney & Janney Attorney Service Rush filing Plaintiffs' Evidentiary Objections to Exhibits Filed by Ecolab in support of Ecolab's opposition to Motion for order substituting class reps	93.00
11/21/14	Janney & Janney Attorney Service Service of Process Plaintiff Matthew Ross' Request for Production of documents, set five; requests for admission Set Seven	100.00
12/9/14	Janney & Janney Attorney Service Service of Process Plaintiffs' Amended FRCP 30(b)(6) Notice of Deposition of PMK	100.00
12/18/14	Commercial Process Serving, Inc. Service of Process Plaintiffs' Third Amended FRCP 30(b)(6) Notice of Deposition of PMK	120.00
12/29/14	Commercial Process Serving, Inc. Service of Process Plaintiffs' Fourth Amended FRCP 30(b)(6) Notice of Deposition of PMK	120.00
Total		\$1,472.00

FEDERAL EXPRESS COSTS
Hathaway Firm

Inv. Date	Cost	Amount
6/2/14	Fed Ex #4813	24.14
6/2/14	Fed Ex #8875	24.14
6/9/14	Fed Ex #9206	34.49
7/31/14	Fed Ex #5426	24.14
10/10/14	Fed Ex # 9518	24.03
1/7/15	Fed Ex #6684	20.80
1/8/15	Fed Ex # 8915	27.48
3/2/15	Fed Ex #7470	88.29
3/17/15	Fed Ex #5320	24.11
4/8/15	Fed Ex #5979	45.95
5/1/15	Fed Ex #2897	28.72
5/1/15	Fed Ex #3183	24.58
5/1/15	Fed Ex #6666	28.72
11/2/15	Fed Ex #5019	34.64
11/11/15	Fed Ex #7423	31.13
Total		\$485.36

FILING FEE COSTS
Hathaway Firm

Date	Cost	Amount
5/10/12	Filing fee Motion to Quash	40.00
5/10/12	Filing fee Motion for Protective Order	40.00
Total		\$80.00

COURT REPORTER COSTS
The Hathaway Firm

Inv. Date	Cost	Amount
6/15/12	Mary Ann Scanlon, CSR Hearing on motion for protective order, motion to quash 6/11/12	109.00
4/26/13	Merrill Corporation Hearing before Judge Nichols on 4/23/13 Cross-motions summary judgment	360.25
6/12/13	Mary Ann Scanlan, CSR Hearing before Judge Kramer 6/6/13 Motions for summary judgment	378.5
8/23/13	Mary Ann Scanlan, CSR Hearing before Judge Kramer, 8/20/13 Motion for decertification of class, motion to substitute class Representative; motion for judgment on pleadings	391.25
10/30/13	Mary Ann Scanlan, CSR Hearing on 9/26/13 motion for summary judgment	706.25
Total		\$2,545.25

PACER COSTS
Hathaway Firm

Inv. Date	Cost	Amount
4/9/10	Pacer Research Jan. – March 2010	2.16
7/14/10	Pacer Research- May – June 2010	19.28
1/18/12	Pacer Research	3.28
7/24/12	Pacer Research – April – June 2012	1.20
4/19/13	Pacer Research	14.20
7/15/13	Pacer Research – April – June 2013	11.00
1/23/14	Pacer Research – Oct. – Dec. 2013	13.20
4/22/14	Pacer Research – 1/1/14 – 3/31/14	64.90
7/7/14	Pacer Research – April – June 2014	81.30
10/22/14	Pacer Research – 7/14 – 9/14	50.60
01/15/15	Pacer Research – 10/1/14 – 12/31/14	21.20
04/20/15	Pacer Research – Jan – March 2015	470.80
7/14/15	Pacer Research – 4/1/ - 6/30/15	226.90
10/27/15	Pacer Research 7/1/15 to 9/30/15	29.20
1/14/16	Pacer Research 10/1/15 – 12/31/15	77.70
6/30/16	Pacer Research 4/1/16 – 6/30/16	145.30
Total		\$1,232.22

COURT CALL COSTS

Hathaway Firm

Inv. Date	Cost	Amount
10/28/10	Court call for 9/29/10	65.00
5/21/12	Court call for 5/10/12	78.00
4/24/13	Court call for 4/2/13	78.00
5/28/13	Court call for 4/29/13	78.00
Total		\$299.00

Exhibit C

ROSS v. ECOLAB INC.
Lodestar Summary
Hathaway Firm

Task**see key below	Alejandro P. Gutierrez (Partner)	Adam A. Acevedo (Assoc. Atty)	Coleen De Leon (Certified Paralegal)	Debra D. Acevedo (Certified Paralegal)	Cumulative
Investigation	29.5				29.50
Written Discovery	134.5		39.6		174.10
Pleadings	14.7				14.7
Law and Motion (including legal research)					
Plaintiffs' Motion Protective Order/Quash	4		37.2		41.20
Opp Ecolab Motions Protective Order/Sanction	7.1		13.8		20.90
Ecolab First Removal	10.45				10.45
Ecolab Second Removal	2.55				2.55
Ecolab Third Removal	1				1
Opp Ecolab First Motion Dismiss	13.05		35.3		48.35
Plaintiffs' Motions Remand	11.4				11.40
Plaintiffs' Motion Sanctions	1.5				1.50
Opp Ecolab Second Motion Dismiss	5.1				5.10
Ps' Motion Disclosure Putative Class	3.45				3.45
Ps' Motion Compel Further Responses	10.75				10.75
Ecolab Motion Reconsideration	3.4				3.40
Ps' Motion Summary Adjudication	114.90				114.90
Ps' Motion for Class Certification	98.7		9.9		108.60
Ps' Motion Quash Subpoenas	2.5				2.50
Opp Ecolab First MSJ	41.30		44.2		85.50
Ecolab Motion Complex Designation	3.10				3.10
Opp Ecolab Second MSJ	112		156.1		268.10
Opp Ecolab First Decertification Motion	40.2				40.20
Opp Ecolab Second Decertification Motion	15.15				15.15
Ps' Motion Trial Management Plan	21.6		20.3		41.90
Ps' Motion Substitution Class Representative	17.50		17.2		34.70
Ps' Motion Judgment on Pleadings	7.60				7.60
Ps' Motion Partial Summary Judgment/Reply	321.25		520.30		841.55
Opp Ecolab Cross-Motion SJ	147.95		185.90	.75	334.60

ROSS v. ECOLAB INC.
Lodestar Summary
Hathaway Firm

Task	Alejandro P. Gutierrez (Partner)	Adam A. Acevedo (Assoc. Atty)	Coleen De Leon (Certified Paralegal)	Debra D. Acevedo (Certified Paralegal)	Cumulative
Ps' Motion Strike Affirmative Defenses	6.5		43.3		49.80
Ecolab Motion Extension Time	.40				.40
Supp Brief Re Meal Periods	10.40		15.90		26.30
Opp Ecolab Motion Certify for Appeal	2.90		67.90		70.80
Ecolab Pro Hac Vice Motions	.70				.70
Case management	41.55		6.5		48.05
Rule 26 Disclosures	18.7				18.70
Document review/Indexing/analysis	91.65	92.8	25.00	39.00	248.45
Depositions	409.2	3.6	109.20		522.00
Power Point Presentation Re Exemptions	7.5		48.1		55.60
Mediation preparation and attendance	113.35		80.70		194.05
Post-settlement work	7.70				7.70
Motion Preliminary Approval Settlement	20.9		3.70		24.60
Motion Final Approval Settlement	22.80		63.40		86.20
Motion Attorney Fees and Costs	82.6		270.8		353.40
Motion for Incentive Awards	7.10		23.1		30.20
Client communications	73.10		30.70		103.80
Expert research/communications	9.15				9.15
Preliminary trial preparation	15.30		1.7		17.00
Total hours:	2,137.70	96.40	1,869.80	39.75	4,143.65
Rate	X \$800	X \$400	X \$195	X \$195	
Lodestar	\$1,710,160	\$38,560	\$364,611	\$7,751.25	\$2,121,082.25

****Key:**

Investigation: This category includes time spent investigating the potential claims of the original plaintiff, James Icard, which occurred prior to the filing of the initial complaint in December 2009. This category also includes work performed to meet with Mr. Icard and initiate the attorney-client relationship. This category also includes research regarding the route manager position and products carried, reviewing MSDS sheets regarding products carried.

ROSS v. ECOLAB INC.**Lodestar Summary****Hathaway Firm**

Written Discovery: This category includes time spent preparing written discovery requests and responses, including legal research re: exemptions asserted by Ecolab, interfacing with co-counsel to strategize the contents of discovery requests and the appropriateness of responses, interfacing with the clients to obtain the information necessary for discovery responses, reviewing Ecolab's discovery responses and assessing for potential motions to compel, and meeting and conferring regarding deficient discovery responses.

Pleadings: This category includes time spent preparing the complaint and amended complaints, the filing of the same, and the review of Ecolab's pleadings.

Law and Motion: This category includes time spent preparing all levels of law and motion throughout the case, exclusive of those concerning post-Settlement matters. This category also includes time spent performing necessary legal research for each of the motions, whether they were the initiating motion, the opposition, the reply brief, or evidentiary objections. This category also includes appearance at the hearings on each motion, and the travel thereto (which was usually round-trip from our office in Ventura to the San Francisco Bay Area).

Case Management: This category includes time spent performing case management-related tasks, such as reviewing scheduling orders, standing orders, and local rules, stipulations regarding scheduling orders, meeting with co-counsel and opposing counsel regarding scheduling and case management conferences, preparing joint CMC reports, conferring with counsel regarding ADR issues, reviewing court orders regarding case management, and attending case management conferences.

Disclosures: This category includes time spent preparing the initial and supplemental disclosures and Rule 26 joint report.

Document review: This category includes time spent reviewing documents produced by Ecolab and various class members concerning this case, as well as the indexing and analysis of the same.

Depositions: This category includes time spent drafting deposition notices, drafting objections to deposition notices, deposition scheduling, communications with court reporter and counsel re: deposition schedules, preparing for and attending depositions throughout California, including preparing named plaintiffs and other class members for their depositions, preparing documents for exhibits to depositions of Ecolab corporate witnesses, summarizing deposition transcripts, preparing issue categories from depositions, preparing comparative testimony tables, and reviewing video tapes of depositions.

Mediation: This category includes time spent preparing for and attending mediations, such as drafting mediation briefs and mediation binders, calculating damages, engaging in settlement communications, communicating with the neutrals and their administrators, and the round-trip travel to the mediations.

ROSS v. ECOLAB INC.
Lodestar Summary
Hathaway Firm

<p>Post-settlement work: This category includes time spent communicating with class members after the distribution of the Class Notice of settlement, answering their questions about the settlement and their claims, and interfacing with opposing counsel and the claims administrator to ensure compliance with the court's preliminary approval order and the terms of the settlement agreement.</p>
<p>Motion for Preliminary Approval: This category includes time spent preparing the motion for preliminary approval of the settlement, the Class Notice, the proposed order, and the Settlement Agreement itself. It also includes the attendance at the hearing on the motion for preliminary approval and travel to the San Francisco Bay Area.</p>
<p>Motion for Final Approval: This category includes time spent preparing the motion for final approval of the settlement and accompanying exhibits and declarations, as well as the proposed order. It also includes time spent attending the hearing on the motion, which we have to estimate, given that it has not yet occurred.</p>
<p>Motion for Attorneys' Fees and Costs: This category includes time spent preparing the motion for attorney's fees and costs and all supporting documents for the motion, including declarations from Bay Area attorneys who support the requested hourly rates of Class Counsel. This category also includes time spent going through each billing line item for more than six and one-half years of billing for each timekeeper and sorting each task into its category of task as represented in the above table, updating such categories as timekeepers continued performing tasks in this matter, and preparing this summary of tasks. This category also includes time spent gathering back-up documentation for each cost incurred by Class Counsel, preparing tables of costs for each category of cost, and preparing a summary of those costs.</p>
<p>Motion for Incentive Awards: This category includes preparing the motion and four supporting declarations, as well as the proposed order.</p>
<p>Client communications: This category includes time spent communicating directly with the named plaintiffs and other class members.</p>
<p>Expert: This category includes time spent researching and communicating with potential expert witnesses, time spent communicating with retained expert Dr. Drogin and supplying him with information needed to compile his expert report.</p>
<p>Preliminary trial preparation: This category includes time spent preparing for the eventual trial in this matter.</p>

Exhibit D

LAFFEY MATRIX

[History](#)
[Case Law](#)
[Expert Opinion](#)
[See the Matrix](#)
[Contact us](#)
[Home](#)
[Links](#)

			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *McDowell v. District of Columbia*, Civ. A. No. 00-594 (RCL), LEXSEE 2001 U.S. Dist. LEXIS 8114 (D.D.C. June 4, 2001); *Salazar v. Dist. of Col.*, 123 F.Supp.2d 8 (D.D.C. 2000).

* "Years Out of Law School" is calculated from June 1 of each year, when most law students graduate. "1-3" includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). "4-7" applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier "1-3" from June 1, 1996 until May 31, 1999, would move into tier "4-7" on June 1, 1999, and tier "8-10" on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

Exhibit E

SALARY TABLE 2015-SF
INCORPORATING THE 1% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 35.15%
FOR THE LOCALITY PAY AREA OF SAN JOSE-SAN FRANCISCO-OAKLAND, CA
TOTAL INCREASE: 1%
EFFECTIVE JANUARY 2015

Hourly Basic (B) Rates by Grade and Step
Hourly Overtime (O) Rates by Grade and Step

Grade	B/O	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
1	B	\$ 11.76	\$ 12.15	\$ 12.54	\$ 12.93	\$ 13.33	\$ 13.55	\$ 13.94	\$ 14.33	\$ 14.35	\$ 14.71
	O	17.64	18.23	18.81	19.40	20.00	20.33	20.91	21.50	21.53	22.07
2	B	13.22	13.54	13.98	14.35	14.51	14.93	15.36	15.79	16.21	16.64
	O	19.83	20.31	20.97	21.53	21.77	22.40	23.04	23.69	24.32	24.96
3	B	14.43	14.91	15.39	15.87	16.35	16.83	17.31	17.80	18.28	18.76
	O	21.65	22.37	23.09	23.81	24.53	25.25	25.97	26.70	27.42	28.14
4	B	16.20	16.74	17.28	17.82	18.36	18.90	19.44	19.98	20.52	21.06
	O	24.30	25.11	25.92	26.73	27.54	28.35	29.16	29.97	30.78	31.59
5	B	18.12	18.72	19.33	19.93	20.54	21.14	21.75	22.35	22.95	23.56
	O	27.18	28.08	29.00	29.90	30.81	31.71	32.63	33.53	34.43	35.34
6	B	20.20	20.87	21.55	22.22	22.89	23.57	24.24	24.91	25.59	26.26
	O	30.30	31.31	32.33	33.33	34.34	35.36	36.36	37.37	38.39	39.39
7	B	22.45	23.19	23.94	24.69	25.44	26.19	26.93	27.68	28.43	29.18
	O	33.68	34.79	35.91	37.04	38.16	39.29	40.40	41.52	42.65	43.77
8	B	24.86	25.69	26.52	27.35	28.17	29.00	29.83	30.66	31.49	32.32
	O	37.29	38.54	39.78	41.03	42.26	43.50	44.75	45.96	47.19	48.43
9	B	27.46	28.37	29.29	30.20	31.12	32.03	32.95	33.86	34.78	35.69
	O	41.19	42.56	43.94	45.30	46.66	48.03	49.39	50.75	52.11	53.47
10	B	30.24	31.24	32.25	33.26	34.27	35.27	36.28	37.29	38.30	39.30
	O	45.36	45.36	45.36	45.36	45.36	45.36	45.36	45.36	45.36	45.36
11	B	33.22	34.33	35.43	36.54	37.65	38.76	39.86	40.97	42.08	43.19
	O	45.36	45.36	45.36	45.36	45.36	45.36	45.36	45.36	45.36	45.36
12	B	39.82	41.14	42.47	43.80	45.13	46.45	47.78	49.11	50.44	51.77
	O	45.36	45.36	45.36	45.36	45.36	46.45	47.78	49.11	50.44	51.77
13	B	47.35	48.93	50.50	52.08	53.66	55.24	56.82	58.39	59.97	61.55
	O	47.35	48.93	50.50	52.08	53.66	55.24	56.82	58.39	59.97	61.55
14	B	55.95	57.82	59.68	61.55	63.41	65.28	67.14	69.01	70.87	72.74
	O	55.95	57.82	59.68	61.55	63.41	65.28	67.14	69.01	70.87	72.74
15	B	65.81	68.01	70.20	72.40	74.59	76.04	76.04	76.04	76.04	76.04
	O	65.81	68.01	70.20	72.40	74.59	76.04	76.04	76.04	76.04	76.04

* Rate limited to the rate for level IV of the Executive Schedule (5 U.S.C. 5304 (g)(1)).

Applicable locations are shown on the 2015 Locality Pay Area Definitions page: <http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2015/locality-pay-area-definitions/>